

DEC 12 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****STEPHEN CINO,****Defendant - Appellant.****No. 04-17053****D.C. Nos. CV-04-00953-PMP
CR-97-00082-PMP****MEMORANDUM^{*}**

**Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding**

Submitted December 5, 2005 ^{}**

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Stephen Cino appeals the district court's denial of his 28 U.S.C. § 2255 motion challenging the sentence imposed following his conviction on counts of interference with commerce by threats or violence and aiding and abetting,

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conspiring to commit an offense against the United States in connection with a counterfeit traveler's check scheme, wire fraud and aiding and abetting, money laundering, possession and uttering of counterfeit obligation of organization, and mail fraud and aiding and abetting. We have jurisdiction pursuant to 28 U.S.C. § 2253.

Cino contends that his Sixth Amendment rights were violated because his sentence was enhanced on the basis of several facts found by the district court by a preponderance of the evidence, that were neither charged in the indictment nor proven to a jury beyond a reasonable doubt. A Certificate of Appealability was granted on the issue of whether *Blakely v. Washington*, 542 U.S. 296 (2004), should be applied retroactively to cases on collateral review. This court has foreclosed the retroactive application of *Blakely*. *See United States v. Cruz*, 423 F.3d 1119, 1120 (9th Cir. 2005) (per curiam) (holding that neither *Blakely* nor *United States v. Booker*, 125 S. Ct. 738 (2005), applies retroactively to cases on collateral review).

We decline to expand the Certificate of Appealability because Cino has failed to make a “substantial showing of the denial of a constitutional right,” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003), *quoting* 28 U.S.C. § 2253(c), and has not demonstrated that “reasonable jurists would find the District Court's

assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*,
529 U.S. 473, 484 (2000).

AFFIRMED.